

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

(Sacramento, California)

CATHOLIC HEALTHCARE WEST d/b/a
MERCY SACRAMENTO HOSPITAL d/b/a
MERCY GENERAL HOSPITAL d/b/a METHODIST
HOSPITAL d/b/a MERCY HOSPITAL FOLSOM d/b/a
MERCY MEDICAL CENTER SAN JUAN 1/
Employer

and

INTERNATIONAL UNION OF OPERATING
ENGINEERS, STATIONARY ENGINEERS
LOCAL 39, AFL-CIO

Petitioner

20-RC-17967**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, 2/ the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. 3/
3. The labor organization(s) involved claim(s) to represent certain employees of the Employer. 4/
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c) (1) and Section 2(6) and (7) of the Act. 5/
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act: 6/

All full time and regular part time engineers, carpenters, maintenance technicians and bio-medical technicians employed at the Employer's Mercy General Hospital, Mercy Medical Center San Juan, Methodist Hospital and Mercy Hospital Folsom facilities located in the Sacramento, California area; and excluding all other employees, groundskeepers, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION 7/

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll

OVER

period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by INTERNATIONAL UNION OF OPERATING ENGINEERS, STATIONARY ENGINEERS LOCAL 39, AFL-CIO.

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB. Wyman-Gordan Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that with 7 days of the date of this Decision 3 copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. North Macon Health Care Facility, 315 NLRB No. 50 (1994). In order to be timely filed, such list must be received in the Regional Office, 901 Market Street, Suite 400, San Francisco, California 94103, on or before July 23, 2004. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, 1099-14th Street, NW, Washington, DC 20570-0001**. This request must be received by the Board in Washington by July 30, 2004.

Dated July 16, 2004.

at San Francisco, California

/s/ Robert H. Miller

Regional Director, Region 20

- 1/ I have amended the name of the Employer to include the hospitals included in the unit found appropriate herein.
- 2/ At the hearing, the parties agreed that the Employer would submit a copy of the human resources policy manual as a late filed exhibit. This document was filed in the Regional Office on July 14, 2004, and pursuant to the parties' agreement, I have included this document in the record as Employer Exhibit 1.

The Union submitted a brief to the Region via facsimile transmission at 5:12 p.m. on July 13, 2004. I have not considered this brief in making this decision because it was untimely filed after the close of business on the day that it was due to be filed in the Region.

- 3/ The parties stipulated, and I find, that the Employer, Catholic Healthcare West, referred to herein as CHW, is a California non-profit public benefit corporation with a place of business in Sacramento California, where it is engaged in the business of operating acute care hospitals, including Mercy General Hospital (herein called Mercy General). During the fiscal year ending June 30, 2004, the Employer derived gross revenues in excess of \$250,000, and purchased and received goods valued in excess of \$5,000, which originated from points located outside the State of California. Based on the parties' stipulation to such facts, I find that the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes and policies of the Act to assert jurisdiction in this matter.
- 4/ The parties stipulated, and I find, that the Union is a labor organization within the meaning of the Act.
- 5/ The parties stipulated, and I find, that there is no contract bar to this petition.
- 6/ By its amended petition, the Petitioner seeks to represent a unit comprised of all full-time and regular part-time engineers, carpenters, maintenance technicians and bio-medical technicians employed at the Employer's Mercy General Hospital facility located in Sacramento, California; excluding all other employees, groundskeepers, guards and supervisors as defined in the Act. There are approximately 17 employees in the petitioned-for unit. The Employer contends that in order to be appropriate, the unit must include employees in the petitioned-for classifications at all of the hospitals within the CHW subdivision called Mercy Healthcare Sacramento (MHS), which, as discussed below, is comprised of four acute care hospitals located in the Sacramento area. There are about 60 employees in the unit that the Employer contends is the appropriate unit.

The only witness to testify at the hearing was CHW's Director of Labor and Employee Relations, Renae Bugge.

The Employer's Operation. The petitioned-for employees work at Mercy General, a 400-bed hospital employing about 800 employees that is within the MHS subdivision of CHW. CHW is a multi-hospital healthcare system doing business in California, Arizona and Nevada. It includes primary acute care hospital facilities as well as some non-acute care medical facilities. Since the late 1980s or early 1990s, MHS has been a subdivision of CHW, that includes four acute care hospitals, Mercy General Hospital, Methodist Hospital, Mercy Hospital Folsom, and Mercy Medical Center San Juan. Until the late 1990s, the CHW/ MHS system also included another acute care facility, Mercy American River Hospital, which is no longer part of the system.

All four MHS hospitals are located in the Sacramento area. Specifically, Mercy General and Methodist Hospital are both located in the City of Sacramento. Methodist Hospital is located in the southern part of the City, just north of the town of Elk Grove. Mercy General is situated near downtown Sacramento, about 12 to 15 miles north of Methodist Hospital. Northeast of Sacramento, in the City of Citrus Heights, is Mercy Medical Center San Juan (herein called Mercy San Juan), which is about 15 miles from Mercy General. Mercy Hospital Folsom (herein called Mercy Folsom) is located in the City of Folsom, which is located about 20 miles from Mercy General and about 15 miles from Mercy San Juan. MHS also has a business administrative office located in Rancho Cordova, California, which provides most of the centralized services for all four MHS hospitals, including patient accounting, payroll, human resources, payor contracting, marketing, information systems, risk management, safety and security and the Employer's legal department. The Rancho Cordova office is also in the Sacramento area and is located about the same distance from all four MHS facilities.

Mercy General and Mercy San Juan are much larger hospitals than Mercy Hospital Folsom and Methodist Hospital. At the time of the Decision and Direction of Election in Case 20-RC-17442, in 1998, which is discussed below, Mercy General included the main hospital and a medical office condominium building. The record does not disclose any changes in the Mercy General campus since that decision issued.

Collective Bargaining History. I take administrative notice that on September 4, 1998, the Acting Regional Director of Region 20 issued a Decision and Direction of Election in *Mercy Healthcare Sacramento d/b/a Methodist Hospital*, Case 20-RC-17442, finding that a petitioned-for unit of "all full-time and regular part-time maintenance technicians, engineers, bio-medical equipment technicians and bio-medical maintenance technicians employed by

the Employer at its Methodist Hospital facility located in Sacramento, California; excluding all clerical employees, guards and supervisors as defined in the Act,” constituted an appropriate unit. This finding was based on the conclusion that the Employer in that case had failed to rebut the presumption that the petitioned-for single location unit was an appropriate unit. As in the instant case, the Employer therein contended that the only appropriate unit was one comprised of employees in the petitioned-for classifications working at all of the MHS hospitals, which at that time included the four hospitals involved in the instant case as well as Mercy American River Hospital, which the Employer no longer operates. The record shows that the Petitioner and the Employer bargained in the unit certified in Case 20-RC-17442, but no collective bargaining agreement was ever reached. Employer Director Bugge incorrectly testified at the hearing that the unit at Methodist Hospital had been decertified. I take administrative notice that in Case 20-RD-2299, by letter dated August 7, 2000, the Petitioner disclaimed interest in representing the unit certified in Case 20-RC-17442 and the decertification petition in that case was withdrawn on August 8, 2000.

The California Nurses Association (herein referred to as the CNA) was certified on December 23, 1996, in Case 20-RC-17195, to represent employees in a multi-location unit that includes the four MHS hospitals herein as well as additional CHW medical facilities in the Sacramento area. Administrative notice is taken of the fact that this unit was certified pursuant to the results of a stipulated election proceeding. Since 1996, the CNA has represented registered nurses in the MHS unit. Overall, it represents registered nurses at twenty CHW facilities.

Since approximately 2000, SEIU Local 250 has represented non-professional and technical employee units covering employees at all four MHS hospitals and at a non-acute care medical facility within MHS. These units were not certified by the Board. In its brief in this case, the Employer’s counsel represented that SEIU Local 250 has consolidated all of its CHW bargaining units, including the MHS hospital unit, for purposes of negotiating with CHW. She further asserts that SEIU Local 250 continues to have a single local supplement to its agreement for MHS. Director Bugge testified that certain contractual provisions of the SEIU Local 250 contract apply uniformly to all CHW employees represented by the SEIU Local 250, and certain provisions apply only to those within the MHS system.

I also take administrative notice of two earlier Board decisions involving the same facilities, *Mercy Hospitals of Sacramento, Inc.*, 217 NLRB 765 (1975) and *Mercy Hospitals of Sacramento*, 244 NLRB 229 (1979), where multi-location units of professional employees, service and maintenance and office

clerical employees at Mercy General and Mercy San Juan were found to be appropriate units.

Administrative and Labor Relations Functions and Policies. CHW Director Bugge testified that in 1998, when the Decision and Direction of Election in *Mercy Healthcare Sacramento d/b/a Methodist Hospital*, Case 20-RC-17442, issued, CHW served only as a holding company, which loosely bound together the many hospitals within CHW. In 1998, approximately four regions existed within CHW with MHS operating as an entity within this regional structure. These regions were subsequently changed into two divisions with MHS operating as part or all of one of these divisions of CHW. According to Bugge, since 1998, CHW has developed into an operating entity rather than a holding company, and its board of directors has assumed a much greater degree of control over its constituent hospitals. Many of the operating hospital and community boards within the system have been dissolved or restructured such that CHW now operates as a single employer.

CHW Director Bugge represents the MHS hospitals in labor relations matters, and is involved in negotiating union contracts, advising hospital management on grievance administration and handling, and assisting individual hospitals in dealing with union organizing and election matters. In addition to Bugge, there is also common human resources leadership over MHS by CHW Vice President of Human Resources Tracy Church. With regard to grievance administration under union contracts, Bugge is involved in a consultative capacity in the early steps of the grievance procedure at all four MHS hospitals and is involved directly at the third step of the grievance procedure. The Employer also has a uniform multi-step dispute resolution procedure for non-represented employees at all four MHS hospitals, with the first two steps of this procedure taking place at the local hospital level with hospital supervisors and/or managers. If a grievance is not resolved at the local level, the employee can appeal to an MHS panel where the employee and the Employer each choose panel members and the decision of the panel is final and/or the dispute may proceed to arbitration. CHW Director Bugge is the Employer's representative on that panel. In this regard, she testified that she had not been involved in any dispute resolution proceedings involving any employees in the petitioned-for unit within the past year.

The Employer has a uniform set of personnel policies and procedures for employees at all MHS hospitals. Revisions to these personnel policies are the responsibility of the Employer's human resources council, which is comprised of human resources administrators, benefits and compensation managers and training managers from each MHS facility, as well as CHW Director Bugge. The council meets on a monthly basis.

The Employer also has a labor strategy group comprised of CHW Director Bugge, CHW's Chief Operating Officer Bill Hunt, the MHS director of finance, and the president, nurse executive and ancillary service director of each of the four MHS hospitals. This group provides bargaining strategies on local practices for all MHS hospitals, such as the posting of jobs and floating between facilities. On global issues, the group serves in an advisory capacity to CHW bargaining strategy leaders such as Bugge. This group meets three or four times a year and more often as needed during contract negotiations. According to Bugge, there are no committees at the individual MHS hospitals that set labor policy.

Transfers & Hiring Procedures The record reflects that where an opening exists at a facility and there are other employees performing the same type of work at the same facility on different shifts, they are given the first priority in bidding on the open shift at their site. Otherwise, job openings for all MHS hospitals are combined on a single integrated list and distributed to each MHS facility and seniority for purposes of applying for open positions is determined on an MHS-wide basis among employees at all MHS hospitals. Employees of MHS hospitals are also given priority to transfer into open positions before persons are hired from outside MHS.

New job applicants are screened on a centralized basis and then their applications are distributed to individual hospitals based on where an open position exists and where the applicant prefers to work. The applicant is then interviewed at the individual facility by the supervisor and/or manager at that facility, who makes the decision of whether to hire the applicant. This decision is then communicated back to the centralized recruiter or employment specialist for all four MHS facilities, who determines whether the selection comports with CHW/MHS policies and the results of background checks and drug testing results received after the applicant was referred to the facility for interviewing. If there are no problems with the hiring decision, the recruiter sends out a letter informing the applicant that he or she has been hired. If the recruiter or employment specialist does see a problem, then the hospital supervisors or managers who made the hiring decision are asked to consider other job applicants.

All four MHS hospitals utilize the same common format for job descriptions and evaluation forms and employees are evaluated under the same standardized criteria. However, Director Bugge testified that job descriptions are individualized for each employee with different performance standards and specific tasks outlined in the description. Bugge further testified that she is not involved in the appraisal process for the employees in the petitioned-for unit and that appraisals are handled either by the immediate supervisor of these employees at Mercy General or his superior at that facility.

The Employer has a uniform probationary period of ninety days and a uniform reduction in force procedure for all MHS hospitals. All MHS hospitals use similar employee identification badges with the MHS logo, except that the badges identify the individual hospital where the employee works.

Non-represented employees at all four MHS hospitals have uniform pay rates and benefits. There is a centralized payroll and benefits administration system for all four MHS hospitals located at the Rancho Cordova office. There is also a common patient accounting system. The MHS facilities have a common marketing strategy department and a common information technology system that is contracted out to the same entity, Perot Industries. The MHS hospitals also use the same fundraising foundation.

MHS has a consolidated budget process. Departments at each hospital within the MHS system formulate their own departmental budgets, which are approved at the individual hospital level and then submitted to CHW's chief operating officer for approval as part of the overall MHS budget. Purchasing for all four MHS facilities is done by a single centralized purchasing entity.

Personnel files and patient files are maintained at each individual hospital. Bargaining, financial, payroll and patient registration records are maintained for all MHS hospitals at the Rancho Cordova office.

Supervision Of the Petitioned-For Employees. The petitioned-for employees report to Mercy General Supervisor Jim Peterson. Peterson reports to another manager within Mercy General, who in turn reports to the Hospital's director of ancillary services, who in turn reports to the Hospital's president. Each of the four hospitals within MHS is headed by a separate president and each hospital also has its own human resources department and its own human resources director, who reports to the hospital's president. The president of each hospital reports to CHW's Chief Operating Officer Bill Hunt. Hunt's jurisdiction covers not only the MHS hospitals but also CHW facilities throughout Northern California.

As indicated above, interviewing for jobs is conducted at the individual hospitals and hiring decisions are made by supervisors and/or managers at each hospital but are subject to reversal at the MHS divisional level if there are conflicts with CHW/MHS policies or problems with background checks or drug testing.

Supervisor Peterson has the authority to assign work to employees within the petitioned-for unit and he can also discipline them and prepare their performance appraisals, so long as his actions conform with CHW/MHS

policies and procedures and he or his superiors at Mercy General consult with the human resources director of Mercy General, Linda Gregory, who reports to Mercy General's president. According to Director Bugge, Gregory is authorized to advise Peterson on all "routine" matters, but if an issue is "out of the ordinary," the hospital consults with CHW Director Bugge.

The management of each individual hospital in MHS handles its own scheduling and there are differences between facilities as to p.m. and night shift coverage requirements.

Employee Functions and Skills. No job descriptions for the petitioned-for employees are in evidence. Bugge testified that although job descriptions for employees are individualized and she was not familiar with the specific job descriptions for employees in the petitioned-for unit, many of the jobs they perform would be standard with some variations due to the nature of the equipment in use at different facilities.

Interchange. The record shows that the Employer has an MHS-wide system of job postings and utilizes MSH-wide seniority in bidding for jobs. Although Director Bugge testified that employees are routinely assigned only to work at a single MHS facility, and that temporary transfers are the exception rather than the norm, she further testified that skilled technicians do perform single and multi-day projects at other facilities, usually in order to make adjustments on machinery.

Analysis. No party disputes that the petitioned-for unit is comprised of skilled maintenance employees, one of the eight units deemed appropriate by the Board in its Health Care Rule. 54 Fed. Reg. 16336, 16347-16348, 284 NLRB 1579, 1596-1597 (1989). Nor do the parties dispute the individual unit inclusions or exclusions. The only issue is whether the petitioned-for unit, which is limited to skilled maintenance employees at Mercy General, is an appropriate unit, or whether the unit must also include skilled maintenance employees at all MHS hospitals. The Employer contends that the unit must include employees in the petitioned-for classifications at all MHS facilities, and the Petitioner takes the position that the petitioned-for single location unit at Mercy General is presumptively an appropriate unit.

The Board applies a presumption that a single-facility unit in the health care industry is appropriate. *Manor Healthcare Corp.*, 285 NLRB 224 (1987); *Heritage Park Health Care Center*, 314 NLRB 1318 (1997); *Lutheran Welfare Services of Northeastern Pennsylvania, Inc.*, 319 NLRB 886 (1995). This presumption can be overcome by showing that the single facility is so effectively merged into a more comprehensive unit, or so functionally integrated, that it has lost its separate identity. *D&L Transportation*, 324 NLRB

160 (1997). In determining whether the single-facility presumption has been rebutted, the Board examines the following factors:

- 1) Geographic proximity of the employees in question;
- 2) Similarity of employee function and skill;
- 3) Similarity of employment conditions;
- 4) Centralization of administration;
- 5) Managerial and supervisory control of employees;
- 6) Employee interchange;
- 7) Functional integration of the employer;
- 8) Bargaining history.

See *In re Stormont-Vail Healthcare, Inc.*, 340 NLRB No. 143 (November 28, 2003); *St. Luke's Health System, Inc.*, 340 NLRB No. 139 (November 28, 2003); *University Medical Center*, 335 NLRB 1318 (2001); *Hartford Hospital*, 318 NLRB 183, 191 (1995); *Staten Island University Hospital v NLRB*, 24 F.3d 450 (2d Cir. 1994); *Passavant Retirement & Health Center*, 313 NLRB 1216, 1218 (1994); *Toledo Hospital*, 312 NLRB 652, 652, (1993); *West Jersey Health System*, 293 NLRB 749, 751 (1989).

As in *St. Luke's Health System*, *In re Stormont-Vail*, and *West Jersey Health System*, the Employer herein has a high degree of functional integration. Thus, the record establishes a high degree of administrative centralization between its four MHS facilities that includes centralized payroll processing, accounting, purchasing, information systems, risk management and safety and security functions. This uniformity also extends to labor relations policies, including a common employee manual, the same pay rates and benefits, and the same hiring and dispute resolution policies.

CHW/MHS management has veto power over the decision-making of local hospital management in personnel matters such as hiring and firing and handles the dispute resolution procedure after step 2, as was the case in *West Jersey Health System*, 293 NLRB at 750. In addition, policy making in labor relations is handled jointly by officials of all four MHS hospitals together with CHW/MHS officials. The record also shows that most of the work of the employees in the petitioned-for classifications is similar at all facilities.

With regard to interchange, the record shows that the Employer has a system of posting open positions at all facilities and common seniority is used in bidding on jobs. Such a system is by its nature conducive to permanent transfers facility-wide. In addition, Bugge testified that skilled maintenance employees sometimes work on single or multi-day projects at other than their assigned facility in order to make adjustments on equipment.

The geographic separation between these facilities is of no greater magnitude than that present in *Stormont-Vail Healthcare*, *St Luke's Health System*, and *West Jersey Health System*, all cases in which the Board found that the single location presumption had been rebutted.

Finally, with regard to the factor of collective bargaining history, it has been over five years since the certification issued in the single location unit at Methodist Hospital in Case 20-RC-17442. The record reflects that the Employer has become more centralized in its operations and administrative functions as well as its handling of labor relations matters during those intervening years. Furthermore, there is no history of collective bargaining in the unit certified in that case. No contract was ever reached between the Employer and the Petitioner covering that unit, and in 2000, the Petitioner disclaimed interest in representing that unit. By contrast, there has been successful bargaining in the MHS-wide units represented by the CNA and SEIU Local 250. For these reasons, I find that the certification in the prior case is not controlling to my determination herein. Rather, I find that the history of collective bargaining in the other MHS-wide units, which is ongoing, is the more relevant consideration with regard to the appropriate unit in this case.

In sum, based on a careful consideration of the foregoing factors, I have concluded that the single facility presumption of appropriateness has been rebutted in this case and that the four-hospital MHS unit is the appropriate unit for collective bargaining purposes. I note that this finding comports with the Board's policy against proliferation of units in the health care industry.

Accordingly, I am directing an election in the MHS-wide unit.

- 7/ The unit in which I am directing an election is much larger than that sought by the Petitioner, comprised of about 60 as opposed to the 17 employees in the petitioned-for unit. The Petitioner will therefore be given ten days in which to notify the Region of its intention with regard to proceeding to an election and to provide the requisite showing of interest in the unit found appropriate herein.